

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KEITH KRAUSE,

Plaintiff,

v.

RON HAYNES,

Defendant.

CASE NO. 3:18-cv-05689-BHS-DWC

REPORT AND RECOMMENDATION

Noting Date: November 28, 2018

The District Court has referred this action, filed pursuant to 42 U.S.C. § 1983, to United States Magistrate Judge David W. Christel. Plaintiff Keith Krause, proceeding *pro se*, initiated this civil rights action on August 21, 2018. Dkt. 1.

The Court initially filed an Order to Show Cause, requiring Plaintiff to explain further why he could not afford the filing fee and why the Court should not recommend denying his Motion to Proceed *In Forma Pauperis* (“Motion for IFP”). Dkt. 5. Plaintiff adequately responded. Dkt. 6. However, the Court entered a Second Order to Show Cause, declining to grant Plaintiff’s Motion for IFP because it was unclear whether Plaintiff could cure the deficiencies the Court identified in Plaintiff’s Proposed Complaint. Dkt. 8. Plaintiff has now filed his Proposed

1 Motion to Dismiss, indicating he filed this action because he did not realize he had other paths
2 for recourse, such as filing a habeas petition. Dkt. 9. He requests the Court dismiss his case
3 without prejudice to allow him to pursue those paths for recourse. *Id.*

4 Under Rule 41(a)(1), an action may be voluntarily dismissed without prejudice by the
5 plaintiff if the plaintiff files a notice of dismissal before the defendant files an answer or
6 summary judgment motion and the plaintiff has not previously dismissed an action “based on or
7 including the same claim.” Fed.R.Civ.P. 41(a)(1); *Wilson v. City of San Jose*, 111 F.3d 688, 692
8 (9th Cir. 1997). Here, the Court has not served Plaintiff’s Complaint and so Defendants have not
9 responded. Because of this, Plaintiff may voluntarily dismiss his action. Therefore, the Court
10 recommends Plaintiff’s Proposed Motion to Dismiss (Dkt. 9) be granted and Plaintiff’s action be
11 dismissed without prejudice. The Court further recommends Plaintiff’s Motion for IFP (Dkt. 4)
12 be denied as moot.

13 Given the fact Defendants have not yet been served and Plaintiff himself is requesting
14 dismissal, the Court recommends the District Judge immediately approve this Report and
15 Recommendation.

16 Dated this 28th day of November, 2018.

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19 David W. Christel
20 United States Magistrate Judge
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